IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

J U D G E M E N T

(1) D.B. CIVIL SPECIAL APPEAL (W) NO.93/1994.
(G.D. Sharma vs. Cotton Corp. of India)

(2) D.B. CIVIL SPECIAL APPEAL (W) NO.155/1993.
(Cottan Corp. of India vs. G.D. Sharma)

D.B. CIVIL SPECIAL APPELAS AGAINST THE ORDER OF THE LEARNED SINGLE JUDGE DATED 06.01.1993.

DATE OF JUDGMENT :: 13th July, 2006

PRESENT

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

In D.B. Civil Special Appeal (W) No.93/1994
Mr.Tribhuvan Gupta, for the appellant.
Mr.Vijay Agarwal, for the respondents.

In D.B. Civil Special Appeal (W) No.154/1993
Mr.Vijay Agarwal, for the appellant.
Mr.Tribhuvan Gupta, for the respondents.

BY THE COURT: - (Per Hon'ble Shri Mohd. Rafiq, J.)

. We by this judgment propose to dispose of the aforementioned two cross appeals filed against the common judgment dated January 06, 1993 passed by the learned Single Judge by which the writ petition filed by G.D. Sharma was partly allowed.

2. The petitioner G.D. Sharma challenged the promotion granted to respondents Nos.2, 3 and 4 and prayed that respondents be directed to grant him promotion to the post of Office Manager (Accounts) retrospectively w.e.f. the date such promotion was granted to respondents Nos.2, 3 and 4 with all consequential benefits.

3. The learned Single Judge vide his aforesaid judgment did not grant the aforesaid relief to the petitioner. The learned Single Judge however while disposing of the writ petition directed that the petitioner should be given promotion on the post of Office Manager (Accounts) w.e.f. 27.04.1983 and granted all consequential benefits flowing therefrom, which being the date on which he was earlier offered his promotion and he declined. The petitioner accepted such promotion although under the protest when

he was again promoted by order dated 09.04.1985. Refusal of the petitioner to accept promotion was under his bona fide misconception that he belonged to general cadre, whereas, according to the findings recorded by the learned Single Judge, he was entitled to promotion on the post of Office Manager (Accounts).

4. This litigation has rather chequered history. The judgment passed by the learned Single Judge was not acceptable to either the petitioner G.D. Sharma or the non-petitioner M/s Cotton Corporation of India. Both of them filed appeals before Division Bench against the aforesaid judgment. These two appeals were decided separately by two different Division Benches of this Court.

5. While the appeal filed by M/s Cotton Corporation of India being D.B. Civil Special Appeal No.155/1993 was decided by the Division Bench vide its judgment dated 23.05.1994 upholding judgment of the learned Single Judge, the appeal preferred by the petitioner G.D. Sharma was allowed by another Division Bench vide its judgment dated 22.05.1996. Latter Division Bench in its judgment did not notice earlier Division Bench judgment. The

Division Bench thus, allowed the appeal and held that the first respondent was entitled to be treated in general cadre and directed that he should be given promotion w.e.f. 1978. M/s Cotton Corporation of India filed Special Leave to Petition against the latter Division Bench judgment, which was allowed by the Hon'ble Supreme Court vide judgment dated 10th April, 1997 upon both the parties consenting to remand of both the appeals to this Court and for their disposal in accordance with law. Accordingly, both the Division Bench judgments were set aside and this is how these two appeals are before us for disposal.

6. We have heard learned counsel for the parties at some length.

7. This writ petition was originally filed in the year 1983. According to the petitioner G.D. Sharma, he was appointed in the month of November, 1973 as Accounts Assistant and was later on confirmed on this post w.e.f. 19.11.1974. A settlement was arrived at between the employees and respondent Corporation on 16.06.1979, which came into force w.e.f. 01st October, 1977. After the settlement, cadre was bifurcated into two parts namely

Accounts Cadre and General Cadre.

8. Learned counsel for the petitioner contended that prior to settlement a common seniority list was issued on all India level in the month of July, 1975, in which the name of the petitioner was mentioned at serial No.46. However, subsequent to the settlement, the Corporation prepared fresh cadre wise zonal seniority lists as contemplated in clause 19(a) of the settlement. This seniority list issued on 01st March, 1978 reflected the position as obtaining on 31st December, 1978. It is stated that Upper Division Clerks and Lower Division Clerks were separated in General Cadre and Accounts Cadre in this list and it was provided that if no objection thereto was raised by 20th March, 1978, the same shall be treated as final. Name of the petitioner was shown in the list in general cadre at Serial No.2 immediately after Mr.V.P. Talwar and above Shri Kuldeep Chand Vashishtha (respondent No.2 in the petition). Petitioner did not raise any objection.

9. According to the petitioner, change of his cadre from general cadre to accounts cadre has marred chances of his promotion. He therefore served a notice for demand of justice dated 20th October, 1982 on the Corporation. The

corporation sent reply to his notice for demand of justice and stated that the petitioner has appeared in the competitive examination for the post of Office Manager (Accounts) and has rightly been assigned to accounts cadre.

10. In reply to the petition, the respondents have contended that petitioner was promoted as Accounts Assistant and later on he was confirmed also as Accounts Assistant. There was no question of his being treated as Assistant in general cadre thereafter. The petitioner did not raise any objection, when the seniority list was issued. He rather gave his consent by letter dated 23rd January, 1975 and pursuant thereto appeared in the limited competitive test (L.C.T.) for the post of Office Manager (Accounts) and qualified Part I of the same in the month of January, 1978 and subsequently also cleared Part II of the same examination. Consequent upon his passing such examinations, promotion on the post of Office Manager (Accounts) was offered to the petitioner on 27th August, 1993 but he declined to accept the said promotion and still insisted that he should be treated in general cadre and accordingly granted promotion in the said cadre.

11. Learned counsel for the petitioner still contended that the petitioner should be treated as one belonging to general cadre and accordingly granted promotion on the post of Office Manager in general cadre immediately after Shri V.P. Talwar who was so promoted in the year 1979.

12. On the other hand, learned counsel for the Corporation contended that petitioner had given his consent vide his letter dated 23rd May, 1977 to be categorized in the accounts cadre and this was evident from the fact that he appeared in competitive test for the post of Office Manager (Accounts) in two parts in the year 1978. Upon his clearing the said test, he was offered promotion on the post of Accounts Manager. He also stated that not only the petitioner has attained the age of superannuation and retired from service, but even some of the private respondents against whom the petitioner has sought relief may have also retired in the meantime and therefore to grant him promotion at this stage would create complications.

13. Learned counsel for the petitioner thereupon

submitted that if the Corporation was agreeable to implement the direction of the learned Single Judge that the petitioner should be granted promotion on the post of Office Manager (Accounts) w.e.f. 27th April, 1983, the date on which he was originally offered such promotion with all consequential benefits and did not press their appeal against that part of the judgment, the petitioner may also in the changed scenario not press his appeal for grant of promotion in the general cadre.

14. Learned counsel for the Corporation has not pressed the appeal preferred by him and consequently the learned counsel for the petitioner has also not pressed for a decision on merits in his appeal.

15. In this view of the matter, we dismiss both the appeals but with a direction to the Corporation to treat petitioner having been promoted on the post of Office Manager (Accounts) w.e.f. 27th April, 1983 and grant him consequential benefits with interest @ 6% per annum within a period of three months form the date of receipt of copy of this judgment

16. With these observations, both the appeals are dismissed accordingly. There shall be no order as to costs.

[MOHD. RAFIQ],J. **[S.N. JHA],CJ.**

Ashwini/-